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David J. Smith
Clerk of Court
U.S. Court of Appeals for the 11th Circuit
56 Forsyth St., N.W.
Atlanta, Georgia 30303

**Re: Response to EPA's Rule 28(j) Citation of *Oklahoma v. U.S. EPA*,
No. 23-9514 (10th Cir. Feb. 27, 2024) as Supplemental Authority
in *Alabama, et al. v. U.S. EPA*, No. 23-11173**

Dear Mr. Smith:

This Court should reject the application of §7607(b)(1) found in *Oklahoma*. The Tenth Circuit errs by conflating the relevant EPA *action* with EPA's omnibus federal register *notice*. While Petitioners agree that the nature of EPA's administrative action, not the petition, controls whether that action is nationally or regionally applicable, slip op. 11; *Hunt Refining Co. v. EPA*, 90 F.4th 1107, 1110 (11th Cir. 2024), the action here is only EPA's disapproval of the Alabama SIP. Under the Clean Air Act, EPA is required to, and did, act on each state's SIP *independent* of its determination as to any other state's SIP. 42 U.S.C. §7410(k); 88 Fed. Reg. 9,336, 9,354-61 (Feb. 13, 2023). EPA's decision to publish its separate reviews in a single notice does not override the statutory requirement. The Tenth Circuit's opinion fails to recognize that EPA sometimes combines distinct actions into single federal register notices. *See* Pet'rs' Reply Br. 21 n.5. Instead, the panel empowers EPA to eschew Congress's design for regional circuit review simply by packaging separate actions into one notice. Nothing in the "plain text" of §7607(b)(1) authorizes EPA to dictate venue in this way.

The panel emphasizes the scope of the petition is not controlling but looks outside the nature of the discrete EPA action taken and considers EPA's policy

approach—this is inconsistent with the court’s own venue standard. *See* slip op. 12-14. Additionally, Judge Moritz cites *Hunt* to support her opinion yet ignores that this Court specifically distinguished the action at issue in *Hunt* from SIP approvals and disapprovals. Slip op. 13-14; 90 F.4th at 1111-12. This distinction is critical because EPA’s SIP actions were each based on state-specific factors. 88 Fed. Reg. at 9,354-61. Finally, Judge Moritz’s claim that §7607(b)(1) should “centralize judicial review,” slip op. 16, does not pass muster because even EPA found venue appropriate in the local circuits for each of its companion SIP *approvals*. *See* Pet’rs’ Jurisdictional Question Resp. 7 n.5.

Petitioners in *Oklahoma* are seeking Supreme Court review of the Tenth Circuit’s venue decision. *See Oklahoma v. EPA*, No. 23-9561, Doc. 11071730 (10th Cir. Mar. 5, 2024).

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned counsel states that this letter complies with Fed. R. App. P. 28(j) because the body of the letter does not exceed 350 words.

Dated: March 8, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of March 2024, I have filed the foregoing letter using the Court's CM/ECF system, which will electronically serve all counsel of record registered to use the CM/ECF system.

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